

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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R.S.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK, a/k/a HIS
EMINENCE, TIMOTHY CARDINAL DOLAN, as
Archbishop and Corporate Sole of the ARCHDIOCESE
OF NEW YORK, and OUR LADY OF SORROWS ,

Index No. _____

Defendants.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, R.S., by and through undersigned counsel, respectfully shows to this Court and
alleges as follows:

Introduction

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-
g. The Plaintiff, when he was a minor, was sexually assaulted by, a Priest of the Archdiocese of
New York, Edwin Modicowitz, who was assigned to Our Lady of Sorrows.

Parties, Jurisdiction and Venue

1. Plaintiff, R.S., is a citizen and resident of the State of New York. Plaintiff brings
this Complaint using his initials because of the sensitive nature of the allegations of child sexual
abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment
and further psychological damage if his identity as a victim of child sexual abuse were to become

publicly known. His identity will be made known to Defendant, at the latest, upon service of the Summons and Complaint.

2. Defendant, Archdiocese of New York, and Timothy Cardinal Dolan as Archbishop and Corporate Sole of the Archdiocese of New York (hereafter, the “Archdiocese” or the “Archdiocese of New York”), is a religious institution and organization with principal offices located at 1011 First Ave., New York, NY 10022. The Archdiocese of New York controls all Catholic religious, pastoral and educational functions in the boroughs of Manhattan, Bronx and Staten Island, and in other counties in the greater New York metropolitan area. The Archdiocese operates and controls approximately 370 parishes, 274 schools and 90 Catholic charities. The Archdiocese is a citizen and resident of the State of New York.

3. Defendant Our Lady of Sorrows, hereinafter referred to as “Church,” is a Catholic parish and church located in Manhattan, New York City at 103 Pitt Street. At all relevant times, Our Lady of Sorrows was owned, controlled and operated by the Archdiocese of New York.

4. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

5. Personal jurisdiction lies over Defendants Archdiocese and the Church as they are present and domiciled in the State of New York.

6. Venue of this action lies in New York County as a substantial part of the events or omissions giving rise to the claim occurred in New York County or one of the Defendants resides in New York County.

Facts of Sexual Abuse

7. When he was approximately 10 or 11 years old, R.S. arrived in New York from Puerto Rico. His family were devout Catholics, and began attending the Church. There, he was befriended and groomed by Father Edwin Modicowitz.

8. During catechism classes, Father Modicowitz brought Plaintiff to his office and sexually assaulted Plaintiff.

9. The sexual assault incidents occurred on at least ten different occasions over a period of months. The sexual assault incidents were very similar in nature. Father Modicowitz would place Plaintiff on his lap and ask Plaintiff to display pictures of saints on his desk. During this, Father Modicowitz would fondle Plaintiff's genitals.

10. Upon information and belief, Father Modicowitz was a Priest assigned to Our Lady of Sorrows from approximately 1950 to 1962.

11. Upon information and belief, Father Modicowitz was at all relevant times a serial sexual predator who sexually abused multiple boys over a period of decades.

12. Father Modicowitz continued in ministry with access to numerous children until his death in 1980.

13. Upon information and belief, after Father Modicowitz's death, in 1998, he was accused of having sexually abused an altar boy in and around 1965 in Massachusetts. Following the accusation, Modicowitz's former Provincial acknowledged that he had removed Modicowitz from a parish assignment due to "problems." Upon information and belief, this reference to "problems" concerned incidents of child sexual abuse.

14. At all relevant times, the Archdiocese and the Church knew or in the exercise of reasonable care should have known that Father Modicowitz had a propensity for the conduct which

caused injury to Plaintiff, in particular, that he had a propensity to engage in the sexual abuse of children.

15. At all relevant times, it was reasonably foreseeable to the Archdiocese and the Church that Father Modicowitz would commit acts of child sexual abuse or assault on a child.

16. At all relevant times, the Archdiocese and the Church knew or should have known that Father Modicowitz was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his counsel, care and/or protection.

17. With such actual or constructive knowledge, the Archdiocese and the Church provided Father Modicowitz unfettered access to Plaintiff and gave him the opportunity to commit foreseeable acts of child sexual abuse or assault.

Archdiocese's Concealment of Acts of Sexual Abuse by Priests

18. The Archbishop of the Archdiocese at all relevant times knew that Priests of the Archdiocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Archbishop knew that this was a widespread, ubiquitous and systemic problem in the Archdiocese, involving many Priests and numerous victims.

19. Despite receiving credible allegations of child sexual abuse against clergy, the Archdiocese acted to conceal these allegations in an effort to avoid scandal and accountability.

20. This concealment was in accordance with a policy of the Archdiocese, as agent, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Bishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Bishop of the Archdiocese, to use when a cleric abused children using the

confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

21. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

22. The 1962 document reinforced that the Holy See and its agents to whom the documents was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

23. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

24. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. It's recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Archdiocese, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in

the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

25. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Archdiocese, knowingly allowed, permitted and encouraged child sex abuse by the Archdiocese's Priests.

26. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining in a certain place." *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

27. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Bishop of the Archdiocese, in 1988 and 2001.

28. The policies and practices of the Archdiocese designed to conceal sexual abuse by clergy and protect it from scandal and liability included the following:

- (a) transfer and reassignment of clergy known or suspected to abuse minors to

deflect attention from reports or allegations of child sexual abuse;

(b) concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;

(c) failing to alert parishioners from the Priest's prior assignments that their children were exposed to a known or suspected child molester;

(d) failing to report sexual abuse to criminal authorities; and

(e) otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

29. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See and Archdiocese believed it to be perceived as a perquisite, which it condoned and used to its advantage in controlling Priests.

30. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

31. The Archdiocese was in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of its Priests to sexually abuse children.

32. At all relevant times, while the Archdiocese had special and unique knowledge of the risk of child sexual abuse by its Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

33. Plaintiff and his parents had no opportunity to protect Plaintiff against a danger that was solely within the knowledge of the Archdiocese.

34. Upon information and belief, after Plaintiff was abused, the Archdiocese engaged in a plan and scheme pursuant to the Holy See's secrecy policies and practices to avoid discovery of Father Modicowitz's child sexual abuse and the Archdiocese's wrongful conduct which facilitated the sexual abuse of young children.

Nature of Conduct Alleged

35. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

36. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendant acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Modicowitz, to retain Father Modicowitz in ministry with unfettered access to children.

COUNT I
NEGLIGENCE
(against Our Lady of Sorrows)

37. Plaintiff repeats and realleges Paragraphs 1 through 36 above.

38. At all material times, Our Lady of Sorrows and Plaintiff were in a special relationship of church – parishioner, in which Our Lady of Sorrows owed Plaintiff a duty of reasonable care.

39. At all material times, Our Lady of Sorrows and Father Modicowitz were in a special relationship of employer — employee, in which Our Lady of Sorrows owed a duty to control the acts and conduct of Father Modicowitz to prevent foreseeable harm.

40. The Church owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of Our Lady of Sorrows. The Church's duties encompassed the retention and supervision of Father Modicowitz and otherwise providing a safe environment for Plaintiff.

41. Our Lady of Sorrows breached these duties by failing to protect the minor R.S. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Church.

42. At all relevant times, the Church created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

43. At all relevant times, the Church had inadequate policies and procedures to protect children it was entrusted to care for and protect, including Plaintiff.

44. As a direct and proximate result of Our Lady of Sorrows's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

45. The Church's acts and conduct shows a reckless or willful disregard for the safety and well-being of R.S.

WHEREFORE, Plaintiff demands judgment against the Church for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

COUNT II
NEGLIGENCE
(against the Archdiocese)

46. Plaintiff repeats and realleges Paragraphs 1 through 36 above.

47. At all material times the Archdiocese, as principal, and the Church, as agent, were in an agency relationship, such that the Church acted on the Archdiocese's behalf, in accordance with the Archdiocese's instructions and directions on all matters, including those relating to clergy personnel. The acts and omissions of the Church were subject to the Archdiocese's plenary control, and the Church consented to act subject to the Archdiocese's control.

48. At all material times, the Archdiocese and Plaintiff were in a special relationship of church – parishioner, in which the Archdiocese owed Plaintiff a duty of reasonable care.

49. At all material times, the Archdiocese and Father Modicowitz were in a special relationship of employer – employee, in which the Archdiocese owed a duty to control the acts and conduct of Father Modicowitz to prevent foreseeable harm.

50. The Archdiocese owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of the Archdiocese. The Archdiocese's duties encompassed the retention and supervision of Father Modicowitz and otherwise providing a safe environment for Plaintiff.

51. The Archdiocese breached these duties by failing to protect the minor R.S. from sexual assault and lewd and lascivious acts committed by an agent and employee of the Archdiocese.

52. At all relevant times, the Archdiocese created an environment which fostered child sexual abuse against children it had a duty to protect, including Plaintiff.

53. At all relevant times, the Archdiocese had inadequate policies and procedures to

protect children it was entrusted to care for and protect, including Plaintiff.

54. As a direct and proximate result of the Archdiocese's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

55. The Archdiocese's acts and conduct shows a reckless or willful disregard for the safety and well-being of R.S.

WHEREFORE, Plaintiff demands judgment against the Archdiocese for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: New York, New York
August 14, 2019

Respectfully submitted,

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100

By: 

Jeff Herman

jherman@hermanlaw.com

Daniel G. Ellis

dellis@hermanlaw.com

Stuart S. Mermelstein

smermelstein@hermanlaw.com